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No. 86-603

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

HELEN ABELS, *et al.*,
Petitioners,

v.

MONROE COUNTY EDUCATION ASSOCIATION,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Indiana

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review the decision of the Court of Appeals of Indiana, which held that there was sufficient evidence in the record to justify the representation [*i.e.*, agency] fees that petitioners were ordered to pay to their exclusive collective bargaining representative, respondent Monroe County Education Association.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Monroe County Education Association submits that the Petition for a Writ of Certiorari should be denied, and files this brief in opposition to the Petition.

STATEMENT OF THE CASE

Pursuant to Indiana's Certificated Educational Employee Bargaining Act, Ind. Code § 20-7.5-1-1 *et seq.*, respondent Monroe County Education Association ("MCEA") has been recognized as the exclusive representative for a bargaining unit consisting of the teachers employed by the Monroe County Community School Corporation ("School Corporation"). Petitioners are fifty-

four teachers who were employed by the School Corporation during the 1981-82 and 1982-83 school years, and therefore were members of the MCEA bargaining unit.

In its capacity as exclusive representative, MCEA entered into a collective bargaining agreement with the School Corporation covering the period from August 1, 1981 through July 31, 1983. As permitted by Indiana law, that agreement included a representation fee provision [1]—*i.e.*, a provision that required bargaining unit employees who chose not to join MCEA "to pay a Representation Fee to the Association, including the Indiana State Teachers Association and the National Education Association." Appendix to Petition ("App.") 2a. The Indiana State Teachers Association ("ISTA") and the National Education Association ("NEA") are, respectively, MCEA's state and national parent organizations. As part of its affiliation relationship with ISTA and NEA, MCEA has a "unified" membership structure, which means that a teacher may not become a member of MCEA without also joining, and paying dues to, ISTA and NEA. App. 5a, 20a. The collective bargaining agreement further provided that no feepayer "should be forced to contribute financial support to political or ideological activities of the Association unrelated to collective bargaining, contract administration, and griev-

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[1] *See New Prairie Classroom Teachers Association v. Stewart*, 460 N.E.2d 149 (Ind. App. 1983), *transfer denied* (Indiana Supreme Court, Oct. 18, 1983) (holding that a similar representation fee agreement between an exclusive bargaining representative and a school board "was authorized by law, constitutional, and binding upon non-member teachers"); *Fort Wayne Education Association, Inc. v. Goetz*, 443 N.E. 2d 364 (Ind. App. 1982), *transfer dismissed* (Indiana Supreme Court, May 13, 1983).

In their Petition for a Writ of Certiorari, petitioners do not—and could not—challenge the basic constitutionality of collecting representation fees from nonmember employees. *See Abood v. Detroit Board of Education*, 431 U.S. 209 (1977).

ance adjustment, or unrelated to its duties as exclusive bargaining representative." App. 2a.

This representation fee provision was not of the classic variety. Unlike the typical arrangement—pursuant to which the fee automatically is deducted from the nonmember employee's salary, or payment is made a condition of employment for which a noncomplying employee may be terminated—MCEA could enforce this contractual obligation only by suing to recover the amount of any unpaid fees.[2] Accordingly, when petitioners refused to pay their representation fees for the 1981-82 and 1982-83 school years, MCEA filed this lawsuit against them in the Superior Court of Monroe County.[3]

A bench trial was held on October 22 and October 23, 1984. Six witnesses testified on behalf of MCEA. These witnesses described in detail, with appropriate documentation, the activities engaged in by MCEA, ISTA, and NEA during the 1981-82 and 1982-83 school years; the amounts expended for each of these activities; and the specific relationship between these expenditures and the duties performed by MCEA as the exclusive representative.[4] In addition to presenting evidence regarding the

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[2] The Indiana courts have held that it would violate state law to make payment of a representation fee a condition of employment enforceable by termination. *See Anderson Federation of Teachers, Local 519 v. Alexander*, 416 N.E.2d 1327 (Ind. App. 1981).

[3] An earlier lawsuit, filed as a class action by one of the petitioners, already had determined that the particular representation fee provision included in the collective bargaining agreement between MCEA and the School Corporation was "constitutional and does not violate the . . . freedom of expression and other rights protected by the First and Fourteenth Amendments of the United States Constitution." *Hollingsworth v. Monroe County Community School Corporation and Monroe County Education Association*, No. 81C303, Slip op. at 3 (Brown County Circuit Court, June 20, 1983). That decision was not appealed.

[4] These duties included, *inter alia*, bargaining with the School Corporation over "salary, wages, hours, and salary and wage related

expenditures made by MCEA, ISTA, and NEA for activities that were *included* in computing the representation fees that were sought from petitioners, MCEA also presented evidence regarding those expenditures that it had excluded from the representation fees because it did not consider them to be sufficiently related to collective bargaining.

After reviewing the evidence presented at trial, and the briefs that were filed by the parties, the trial court issued its opinion on January 4, 1985. The court began by declaring that:

> The non-members of the MCEA are liable for a fair-share representation fee for the school years 1981-82 and 1982-83 for the costs related to collective bargaining, contract administration, grievance adjustment and its duties as exclusive bargaining representativ[e]. These costs shall not include that portion of the fees for political and ideological activities unrelated to said costs. The scope of the fair-share representation fee encompasses numerous statutory duties with their attendant responsibilities and activities. The MCEA's affiliation with the ISTA and with the NEA provides necessary and vital resources. Without its affiliation with the ISTA and the NEA, the MCEA could not meet its legal obligation without charging exorbitant fees to both members and non-members. App. 20a-21a.

The court then held that each petitioner was liable to MCEA for two representation fees, one covering the

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fringe benefits," Ind. Code. § 20-7.5-1-4; engaging in discussions with the school district concerning "working conditions, other than [salary, wages, hours, and fringe benefits]; curriculum development and revision; textbook selection; teaching methods; selection, assignment, or promotion of personnel; student discipline; expulsion or supervision of students; pupil-teacher ratio; class size or budget appropriations," *id.* § 20-7.5-1-5; and processing grievances against the School Corporation pursuant to the negotiated grievance arbitration provision, *id.* § 20-7.5-1-4.

1981-82 school year and the other covering the 1982-83 school year. Specifically, the court found:

> By a preponderance of the evidence, the Plaintiff [*i.e.*, MCEA] has established the amount of the fair-share fee for the year 1981-82 assessable against each full-time Defendant to be in the sum of Two Hundred Four Dollars and Forty-nine Cents ($204.49) and for said year the amount assessable against each part-time Defendant to be in the sum of One Hundred Twelve Dollars and Twenty-four Cents ($112.24). The Plaintiff has established the amount of the fee for the year 1982-83 assessable against each full-time Defendant to be in the sum of Two Hundred Twenty-six Dollars and Twenty-two Cents ($226.22) and for said year the amount assessable against each part-time Defendant to be in the sum of One Hundred Twenty-four Dollars and Ten Cents ($124.10). App. 23a.

The 1981-82 representation fee for full-time teachers was comprised of $20.00 for MCEA, $140.91 for ISTA, and $43.58 for NEA. For the 1982-83 school year, these amounts increased to $22.00 for MCEA, $155.73 for ISTA, and $48.49 for NEA. App. 21a-22a.

Petitioners appealed these monetary judgments to the Court of Appeals of Indiana, raising several issues that were consolidated by that court into two questions: (1) whether the trial court erred in calculating the representation fees; and (2) whether the representation fees should include payments to ISTA and NEA. *See* App. 4a.

On the first issue, the Court of Appeals set forth the applicable standard for determining whether expenses are chargeable to employees who refuse to join the exclusive representative by quoting at length from this Court's decision in *Ellis v. Railway Clerks*, 466 U.S. 435 (1984):

> [T]he test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive

> representative of the employees in dealing with the employer on labor-management issues. Under this standard, objecting employees may be compelled to pay their fair share of not only the direct costs of negotiating and administering a collective-bargaining contract and of settling grievances and disputes, but also the expenses of activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative of the employees in the bargaining unit. App. 9a-10a (quoting *Ellis, supra*, 466 U.S. at 448).

Furthermore, consistent with prior decisions of this Court and the Indiana courts, the Court of Appeals expressly stated that "the exclusive representative bears the burden of establishing, by a preponderance of the evidence, what proportion of their expenditures were properly assessable against non-members." App. 10a. *See New Prairie Classroom Teachers Association v. Stewart*, 487 N.E.2d 1324, 1329 (Ind. App. 1986), *transfer denied* (Indiana Supreme Court, July 7, 1986) (the exclusive representative "must prove the proportion of [its] total expenditures which were chargeable to objecting employees"), *petition for cert. filed*, 55 U.S.L.W. 3296 (U.S. Oct. 6, 1986) (No. 86-554); *Fort Wayne Education Association, Inc. v. Goetz*, 443 N.E.2d 364, 373 (Ind. App. 1982), *transfer dismissed* (Indiana Supreme Court, May 13, 1983) ("the burden [is] upon the Association to show nonpolitical use of the funds").

Applying the foregoing standards to the record before it, the Court of Appeals concluded that MCEA had met its burden of proof. Specifically rejecting petitioners' argument that certain expenditures that were made by MCEA or its affiliated organizations and that were included in the representation fees were not properly chargeable to objecting feepayers,[5] the court concluded

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[5] Among those expenditures addressed directly by the Court of Appeals were the costs incurred by MCEA in sending representa-

that "[t]he trial court's determination of the proper fair share representation fee is supported by sufficient evidence contained in the record." App. 18a.

With regard to the second issue raised on appeal—whether the representation fees should include payments to ISTA and NEA—the Court of Appeals also found sufficient evidence in the record to support the trial court's judgment. After first observing that "it is clear that MCEA was elected exclusive representative in its status as an affiliate of both ISTA and NEA," App. 5a, the court turned its attention to whether members of the bargaining unit represented by MCEA "may be required to pay any representation fees to the exclusive representative's state or national affiliate organizations," App. 5a. On this issue, the court found that ISTA and NEA provided employees in the bargaining unit with numerous services that properly could be charged to objecting feepayers. As the court explained:

> In the seminal case in this area of the law, *Abood v. Detroit Board of Education*, [431 U.S. 209 (1977)], the United States Supreme Court recognized the wide range of activities an exclusive representative may be called upon to perform. There, the Court stated:
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> > "The designation of a union as exclusive representative carries with it great responsibilities. The tasks of negotiating and administering a collective-bargaining agreement and representing the interests of employees in settling dis-

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tives to annual conventions and workshops of ISTA and NEA, App. 12a-13a; the expenses related to MCEA's annual luncheon for all new teachers, App. 13a; the costs of MCEA's lobbying governmental agencies on matters germane to its duties as exclusive representative, App. 13a-16a; the expenses incurred by MCEA for certain social programs, App. 16a; and MCEA's expenditures related to various professional development workshops, App. 16a-17a. In this Court, petitioners "abandon[] their claim that certain of MCEA's expenditures are not chargeable to them." Petition at 8-9.

> putes and processing grievances are continuing and difficult ones. They often entail expenditure of much time and money. *See* [*Machinists v.*] *Street*, 367 U.S. [740, 760 (1961)]. The services of lawyers, expert negotiators, economists, and research staff, as well as general administrative personnel, may be required."

Abood, [431 U.S. at 221]. State and national organizations, particularly in the area of education, have traditionally supplied these and other services to assist their local affiliates in carrying out collective bargaining responsibilities. Such a network spreads the costs of acquiring these services, thus, facilitating collective bargaining activities even for the smaller bargaining units. If a local organization were required to employ its own staff of lawyers, expert negotiators, economists, and researchers, as the [petitioners'] argument necessarily suggests, the costs of collective bargaining could quickly become prohibitive. We have found no support for such a result. App. 5a-6a.

With specific regard to the services provided to MCEA by ISTA and NEA, the Court of Appeals stated:

> As we noted above, there are numerous services which an exclusive representative would need to employ in order to effectively fulfill its collective bargaining responsibilities. MCEA has chosen to pay fixed yearly fees to ISTA and NEA in return for continuous availability of a wide range of services. Certainly MCEA could have determined that another method of acquiring these collective bargaining services was more advantageous. However, it did not. We perceive no basis which would permit non-members to force MCEA to abandon the approach it has selected as most effective, short of an election to oust MCEA as the bargaining unit's exclusive representative. Therefore, assuming that the fair share representation fees sought for ISTA and NEA are not otherwise objectionable, non-members may be required to pay them. App. 7a-8a.

Finally, the court turned directly to petitioners' "challenge [to] the amount of fair share representation fee[s] destined for ISTA and NEA." App. 18a. The court concluded that this challenge was "merely an invitation to reweigh the evidence" which, the court held, "we will not do." App. 18a.

Petitioners' motion for rehearing was denied, and the Supreme Court of Indiana refused to review the decision of the Court of Appeals.

REASONS FOR DENYING THE WRIT

Petitioners challenge the ruling of the Court of Appeals of Indiana on two grounds: they claim initially that the method used by the court to calculate the amount of the representation fees was incorrect; and they claim, in addition, that the court erred when it included in the representation fees amounts to be paid to ISTA and NEA. As we shall demonstrate, petitioners' first claim is based upon a mischaracterization of the decision of the Court of Appeals, and their second claim relates to conclusions reached by that court with regard to the sufficiency of the evidence presented in the trial court. Neither of these claims presents a question that warrants further review by this Court.

I. THE CONCLUSION OF THE COURT OF APPEALS OF INDIANA THAT MCEA HAD PRESENTED SUFFICIENT EVIDENCE OF ITS CHARGEABLE EXPENDITURES TO JUSTIFY THE REPRESENTATION FEES AWARDED BY THE TRIAL COURT DOES NOT WARRANT REVIEW BY THIS COURT

The first of the two Questions Presented in the Petition for Certiorari is as follows:

> WHEN A UNION SUES A DISSENTING NONMEMBER TO COLLECT AN UNPAID REPRESENTATION FEE, IS THE MEASURE OF DAMAGES REQUIRED BY THE FIRST AMENDMENT:

A. A Pro Rata Share Of The Proven Costs of Collective Bargaining; or

B. Arbitrarily Set Union Dues Less A Union-Determined Rebate Amount?

The clear implication to be drawn from this question is that the Court of Appeals based its affirmance of the representation fees awarded by the trial court on a "dues-less-rebate" approach. This is not in fact so. Consistent with the decisions of this Court and the courts of Indiana, the Court of Appeals required "the exclusive representative [to] bea[r] the burden of establishing, by a preponderance of the evidence, what proportion of [its] expenditures were properly assessable against non-members." App. 10a.

This Court's decisions establish that it is constitutional to require bargaining unit employees, over their objection, to support union activities that are related to collective bargaining. *See, e.g., Chicago Teachers Union v. Hudson*, 475 U.S. ——, 106 S. Ct. 1066, 1069 (1986); *Ellis v. Railway Clerks*, 466 U.S. 435, 455-56 (1984); *Abood v. Detroit Board of Education*, 431 U.S. 209, 217-32 (1977). It is equally well-established that, once a representation fee is challenged by a nonmember employee, the union has the burden of proving the appropriate fee amount: " 'Since the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion.' " *Abood, supra*, 431 U.S. at 239-40 n.40 (quoting *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963)), *quoted in Hudson, supra*, 106 S. Ct. at 1075.

Last Term, in *Hudson, supra*, this Court provided further guidance with regard to the nature of this burden. The Court in *Hudson* stated that a union could not simply "identif[y] the amount that it admittedly had expended for purposes that did not benefit dissenting non-

members," and then charge nonmembers a fee based upon the remaining percentage of total expenditures. 106 S. Ct. at 1076. Rather, a union that seeks to collect representation fees from nonmembers has the burden of "identifying the expenditures for collective bargaining and contract administration that had been provided for the benefit of nonmembers as well as members—and for which nonmembers as well as members can fairly be charged a fee." *Id.*[6]

Despite petitioners' protestations to the contrary, *see* Petition at 14-16, this is precisely the burden of proof that MCEA was required to, and did in fact, meet in this case. As described more fully in the Statement of the Case, *supra* at 5-7, the Court of Appeals expressly stated that the exclusive representative "bears the burden of establishing, by a preponderance of the evidence, what proportion of [its] expenditures were properly assessable against non-members," App. 10a, and it was based on this standard that the court concluded that there was sufficient evidence in the record to support the trial court's judgment that MCEA was entitled to representation fees from the petitioners. Moreover, this was not a new ap-

[6] For purposes of argument, we assume in this brief that this requirement applies to the collection of representation fees by exclusive representatives in Indiana, and demonstrate that MCEA in fact complied with this requirement. It is important to note, however, that the Court in *Hudson* was dealing with the totally different situation in which a union seeks to collect and expend representation fees *before* an impartial determination has been made as to the allowable amount of the fee. In such circumstances, the Court indicated that "[b]asic considerations of fairness, as well as concern for the First Amendment rights at stake, . . . dictate that the potential objectors be given sufficient information to guage the propriety of the union's fee." 106 S. Ct. at 1076. This rationale is not applicable in Indiana: there is no risk to a nonmember employee's First Amendment rights, inasmuch as state law prohibits the involuntary collection of representation fees from public school teachers, by payroll deduction or otherwise, unless and until there has been a final court judgment against the teachers awarding a specified representation fee to their exclusive representative.

proach for the Indiana courts. In previously upholding the imposition of representation fees under Indiana law, the Court of Appeals had concluded that exclusive representatives "must prove the proportion of their total expenditures which [are] chargeable to objecting employees," *Stewart*, *supra*, 487 N.E.2d at 1329, and that "the burden [is] upon the Association to show nonpolitical use of the funds," *Goetz*, *supra*, 443 N.E.2d at 373. In short, the holding of the Court of Appeals is fully consistent with this Court's agency fee decisions, including its decision in *Hudson*.

To be sure, in the course of its decision the Court of Appeals noted that the amount of the representation fees awarded by the trial court was less than the amount of dues charged to members of MCEA, and that this reduction "reflect[ed] the dues each organization charges its members less a 'rebate' for political, ideological, and organizational expenses unrelated to collective bargaining activities." *See* App. 3a n.2, 4a n.3. With this language, however, the court plainly did not mean to suggest that MCEA had failed to meet its burden of proving chargeable expenditures, for that would have been flatly inconsistent both with its own statement that MCEA "bears the burden of establishing, by a preponderance of the evidence, what proportion of [its] expenditures were properly assessable against non-members," App. 10a, and with established Indiana law on the subject, *see Stewart*, *supra*, 487 N.E.2d at 1329; *Goetz*, *supra*, 443 N.E.2d at 373. Rather, this statement merely reflected the fact that, during the trial, MCEA did more than was required: it not only proved chargeable expenditures, but also identified those expenditures which could not be included in the representation fees.[7]

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[7] There is one other paragraph in the Court of Appeals' opinion that, on its face, may appear inconsistent with this Court's decision in *Hudson*. *See* App. 11a. Because there was sufficient evidence in the record with regard to MCEA's chargeable expenditures to sup-

Petitioners' assertion that the Court of Appeals based the representation fees on "Union Dues Less a Union-Determined Rebate Amount," Petition at i, rather than on proof of MCEA's chargeable expenditures, reflects a total misunderstanding of the role that membership dues played in the court's calculation of the fees. The dues were not used by the court to alter in any way the requirement that "the exclusive representative bears the burden of establishing, by a preponderance of the evidence, what proportion of [its] expenditures were properly assessable against non-members." App. 10a. Indeed, the Court of Appeals in this case expressly concluded that "[t]he trial court's determination of the proper fair share representation fee is supported by sufficient evidence contained in the record." App. 18a. It was only *after* that requirement had been satisfied that dues were used as a benchmark against which to calculate the allowable representation fees. Simply stated, once sufficient evidence had been introduced to establish the percentage of the total expenditures of MCEA, ISTA, and NEA that were " 'necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative,' " App. 9a-10a (quoting *Ellis, supra*, 466 U.S. at 448), the court applied that percentage to the dues charged to MCEA members to determine the amount of the representation fees.

This use of dues as the final step in the representation fee calculation process finds ample support in the decisions of this Court, *see, e.g., Abood, supra*, 431 U.S. at 238 (citing *Machinists v. Street*, 367 U.S. 740, 774-75 (1961), for remedy of "restitution of a fraction of union

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port the trial court's judgment, however, this paragraph was completely unnecessary to the Court of Appeals' holding and therefore cannot provide the basis for review by this Court. *See Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984) (this Court "reviews judgments, not statements in opinions"); *Black v. Cutter Laboratories*, 351 U.S. 292, 297-98 (1956) (same).

dues paid equal to the fraction of total union expenditures that were made for political purposes"), and is in accord with the approach taken in various statutes authorizing the collection of representation fees, *see, e.g.*, 45 U.S.C. § 152, Eleventh (Railway Labor Act provision linking involuntary membership fees to dues); Mich. Comp. Laws § 423.210(1)(c) (providing that representation fees for Michigan public employees may be "equivalent to the amount of dues uniformly required of members"); N.J.S.A. 34:13A-5.5(b) (providing that representation fees for New Jersey public employees may not "exceed 85% of the regular membership dues").

Petitioners contend that *Hudson* supports their position, but they are mistaken. There is nothing in that decision that disallows a cross-reference to dues for purposes of calculation *after* a union has, as MCEA did here, proven the percentage of its total expenditures that is chargeable to nonmembers. Although a union's total expenditures may not in each and every year be precisely the same as its total dues income, the Court in *Hudson* obviously intended to allow for this type of minimal discrepancy when it reaffirmed that "'[a]bsolute precision' in the calculation of the charge to nonmembers cannot be 'expected or required.'" 106 S. Ct. at 1076 n.18 (quoting *Allen, supra*, 373 U.S. at 122, and *Abood, supra*, 431 U.S. at 239-40 n.40). Indeed, both the Court of Appeals and the Supreme Court of Indiana specifically considered the propriety of MCEA's representation fees in light of *Hudson*. Thus, petitioners emphasized the alleged conflict between the decision in this case and the March 4, 1986 decision in *Hudson* when filing their motion for rehearing in the Court of Appeals and their petition to transfer the case to the Supreme Court of Indiana. After specifically noting that it "is clearly bound to apply the constitutional limitations announced in" *Hudson*, App. 26a, the Court of Appeals denied petitioners' request for rehearing on March 26, 1986. And subsequently, on

July 14, 1986, the Supreme Court of Indiana summarily denied petitioners' request to transfer the case to that court. App. 27a.[8]

In short, the first Question Presented in the Petition for Certiorari is based on a mischaracterization of the decision of the Court of Appeals of Indiana, and therefore cannot properly provide the basis for review by this Court.

II. THE CONCLUSION OF THE COURT OF APPEALS THAT THERE WAS SUFFICIENT EVIDENCE IN THE RECORD TO INCLUDE PAYMENTS TO ISTA AND NEA IN THE REPRESENTATION FEES DOES NOT WARRANT REVIEW BY THIS COURT

Petitioners do not contend that "amounts spent by ISTA and NEA in support of collective bargaining activities by MCEA are not chargeable to nonmembers." Petition at 23. To the contrary, petitioners concede that, "if proved, they could be charged a pro rata share of such costs." *Id.* *See Hudson, supra,* 106 S. Ct. at 1076 n.18

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[8] Petitioners also seek to demonstrate that the representation fees were excessive by comparing total expenditures by MCEA, ISTA, and NEA for the 1981-82 and 1982-83 school years with the number of employees in MCEA's bargaining unit and the number of potential ISTA and NEA members during those years. *See* Petition at 4-6. Even assuming, *arguendo,* that petitioners correctly state the number of employees represented and dollars expended, these numbers are explained by the annual fluctuations that are inherent in any union's budgetary process. Despite these fluctuations, unions almost invariably choose to assess a flat rate of dues on their members, rather than constantly changing their dues structure to account for annual variations in expenditures. The same administrative latitude surely must be available for representation fees. *Cf. Hudson, supra,* 106 S. Ct. at 1076 n.18 ("the Union cannot be faulted for calculating its fee on the basis of its expenses during the preceding year"). Indeed, the record in this case shows that MCEA's total expenditures in certain years (including 1981-82) actually exceeded its total revenue from dues, and the carryover from other years (including 1982-83), in which the reverse was true, was used to cover the shortfall.

(indicating that, upon proper showing, a union's payments "to its affiliated state and national labor organizations" may be included in a representation fee). What petitioners do contend is that the Court of Appeals erred when it included payments to ISTA and NEA in the representation fees "because MCEA presented no evidence of actual expenditures by its affiliates for the petitioners' bargaining unit, [and therefore] MCEA failed to carry its burden of proof." Petition at 23.

Although this contention simply disregards the record in this case,[9] we oppose petitioners' request for review on a more basic ground. Their argument relates solely to conclusions reached by the Court of Appeals with

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[9] As explained more fully in the Statement of the Case, *supra* at 4, 7-9, the trial court found ample evidence in the record to demonstrate that ISTA and NEA provided "necessary and vital resources" to MCEA, without which MCEA "could not meet its legal obligation" to employees in the bargaining unit. App. 21a. Similarly, the Court of Appeals concluded that "there are numerous services which an exclusive representative would need to employ in order to effectively fulfill its collective bargaining responsibilities. MCEA has chosen to pay fixed yearly fees to ISTA and NEA in return for continuous availability of a wide range of services. Certainly MCEA could have determined that another method of acquiring these collective bargaining services was more advantageous. However, it did not." App. 7a-8a. As succinctly summarized by the Court of Appeals:

> State and national organizations, particularly in the area of education, have traditionally supplied [the "services of lawyers, expert negotiators, economists, and research staff, as well as general administrative personnel"] to assist their local affiliates in carrying out collective bargaining responsibilities. Such a network spreads the costs of acquiring these services, thus, facilitating collective bargaining activities even for the smaller bargaining units. If a local organization were required to employ its own staff of lawyers, expert negotiators, economists, and researchers, as the [petitioners'] argument necessarily suggests, the costs of collective bargaining could quickly become prohibitive. We have found no support for such a result. App. 6a (quoting *Abood, supra*, 431 U.S. at 221).

regard to the sufficiency of the evidence presented in the trial court. When all is said and done, petitioners simply disagree with the holding of the Court of Appeals that:

> [Petitioners'] . . . challenge [to] the amount of fair share representation fee[s] destined for ISTA and NEA . . . is merely an invitation to reweigh the evidence which we will not do. App. 18a.

This disagreement concerning the sufficiency of evidence in the record clearly does not present a question that warrants review by this Court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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